



**Maina & Maina Advocates v Rwathia Distributors Limited, Kia Group Limited & Viatech Services Limited Consortium (RKVConsortium) (Miscellaneous Application E1155 of 2020) [2023] KEHC 26956 (KLR) (Commercial and Tax) (15 December 2023) (Ruling)**

Neutral citation: [2023] KEHC 26956 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
MISCELLANEOUS APPLICATION E1155 OF 2020  
DO CHEPKWONY, J  
DECEMBER 15, 2023**

**BETWEEN**

**MAINA & MAINA ADVOCATES ..... APPLICANT**

**AND**

**RWATHIA DISTRIBUTORS LIMITED, KIA GROUP LIMITED & VIATECH SERVICES LIMITED CONSORTIUM (RKVCONSORTIUM) ..... RESPONDENT**

**RULING**

1. What is before the court for determination is the Chamber Summons Application dated 2<sup>nd</sup> June, 2021 which seeks the following orders:
  - a. The Ruling of the Learned Deputy Registrar dated 28<sup>th</sup> April, 2021 on the Respondent/ Advocate's Advocate-Client Bill of Costs dated 21<sup>st</sup> October, 2020 be set aside in part, and be taxed afresh by this Honourable Court.
  - b. In the alternative to prayer No.1 above, this Honourable Court be pleased to set aside the decision of the Learned Deputy Registrar's dated 28<sup>th</sup> April, 2021 in part and remit the matter for fresh taxation of contested issues, before a different Taxing Master.
  - c. The costs of this Application be provided for.
2. The Application is supported by the grounds set out on its face and the Supporting Affidavit of Vivienne Eyase. The gist of the application is that the Deputy Registrar in the Ruling delivered on 28<sup>th</sup> April, 2021, held that the client had fully settled the Advocates' Bill and had even overpaid the same by Kshs 87,282.00. It is the Advocate's contention that the Deputy Registrar made fundamental errors in



assessment and computation of figures and arrived at an award which was erroneous and unjustifiable in this ruling and therefore the application should be allowed.

3. In response, the Client filed Replying Affidavit which was sworn by Gideon Mutai, an Advocate of the High Court of Kenya on 14<sup>th</sup> July, 2021. The client avers that the Ruling of the Deputy Registrar was not erroneous and therefore the application is unmerited and should be dismissed. He holds that the Bill of Costs dated 21<sup>st</sup> October, 2020, the Advocate had acknowledged receiving the client's payments of Kshs. 2,155,582/= in legal fees paid on diverse dates in instalments of Kshs. 386,000/= paid on 28<sup>th</sup> January, 2020, Kshs 500,000/= paid on 16<sup>th</sup> June, 2020 and Kshs 1,269,582/= paid 19<sup>th</sup> June, 2020.
4. It is the Client's contention that Deputy Registrar rightly considered Kshs. 1,769,582.00 and thus the Ruling of the Deputy Registrar was not erroneous and it should be dismissed.
5. In canvassing the application, the Advocate filed its Submissions dated 10<sup>th</sup> June, 2022 wherein it raised three issues for determination being:-
  - a. Whether the learned Deputy Registrar disregarded part of the Applicant's submissions in arriving at his findings.
  - b. Whether the learned Deputy Registrar erred in his computation of figures.
  - c. Whether the Applicant has made out a compelling case for the grant of the Orders sought.
6. The Advocate argues that out of the total sum received from the client, only Kshs 386,000/= formed part of the legal fees as the remaining part was remitted by the Advocate to another firm of advocates for costs and legal fees as per the consent filed in court by the parties. The Advocate holds that Deputy Registrar did not consider the evidence tendered in the submissions with regard to the amount of money, hence made the erroneous decision that all the money paid was meant for the Advocate's legal fees. The Taxing Master therefore made an erroneous computation of figures and the Advocate seeks that the court allows its application.
7. On the other hand, the Client in the submissions dated 28<sup>th</sup> June, 2022 raised two issues for determination:-
  - a. Whether the Taxing Master's decision is unreasonable in arriving its findings.
  - b. Whether the Applicant's application has merit to warrant the court's interference.
8. It is the Client's argument that the Ruling of the Deputy Registrar was delivered on 28<sup>th</sup> April, 2022 and the Advocate had 14 days to put in a notice in objecting the same. It holds that instead, the Advocate filed a Notice dated 9<sup>th</sup> May, 2021 which was not specific but generalised that they were aggrieved by the decision of the Deputy Registrar's decision. The Client contends that the Advocate has not followed the due procedure provided for under the Advocates Remuneration Order and therefore the application should be dismissed on that pretext.

### **Analysis and Determination**

9. This court has carefully read through the pleadings and submissions filed by the parties herein and finds that the following issues arise for determination:-
  - a. Whether the Advocate followed the due procedure in approaching the court.
  - b. Whether the application dated 2<sup>nd</sup> June, 2021 has merit to warrant grant of the orders sought therein.



### **Whether the Advocate followed due procedure in approaching the court**

10. It is worth of note that this issue was raised by the Respondent in their submissions and yet it had not addressed the same in its Replying Affidavit which in effect is ambushing the Applicant, it will not have an opportunity to respond to the issues raised therein, which is contrary to the rules of procedure in law.

### **Whether the Application has merits to warrant the orders sought.**

11. It is trite law that in matters of taxation the mandate of the High Court is not to interfere with the decision of the taxing officer unless such decision is based on wrong principles or errors, as this is within their discretion. This was the decision of the Court of Appeal case of Peter Muthoka & Anor Vs. Ochieng & 3 Others (2019)eKLR it was stated as follows;

“It is not lost to us, as we address that single issue, that matters of quantum of taxation properly belong in the province and competence of taxing masters. They fall within their discretion and so that High Court upon a reference will be slow to interfere with them. It is not a wild and unaccountable discretion, however, because it is at its core and by definition a judicial discretion to be exercised, not capriciously at a whim, but on settled principles. When it is shown that there was a misdirection on some matter resulting in a wrong decision, or it is manifest from the case as a whole that the discretion was improperly exercised, resulting in mis-justice, then the decision though discretionary may properly be interfered with”

12. The grounds the advocate has raised in the Reference is that although the Client paid the Advocate, the amount was not meant for legal fees but it was for onward transmission to the other advocates. This court has carefully gone through the annexures in the Application, particularly the email dated 22<sup>nd</sup> June, 2020 from the Client and addressed to the Advocate, which acknowledged that the funds should be remitted to the Firm of Wamae Allen Co Advocates. It has also noted a letter dated 27<sup>th</sup> July, 2020 from the client to the Advocate for the remittance. Further, from the letter dated 18<sup>th</sup> August, 2020, the Client wrote to the Advocate seeking for a refund of the monies paid to them for the onward remission to the other advocates which the Advocates had refused to pay. However, the Advocate has not shown any evidence that the amount was indeed remitted to the other advocates or that it did not form part of the legal fees. In absence of such proof, the decision of the Deputy Registrar cannot be said to have been erroneous to warrant any interference by the court.
13. In the circumstances, the Application dated 2<sup>nd</sup> June, 2021 is found lacking merit and the same is hereby dismissed with costs to the Respondent.

It is so ordered.

**RULING DATED AND SIGNED AT KIAMBU THIS 13TH DAY OF DECEMBER, 2023.**

**D. O. CHEPKWONY**

**JUDGE**

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 15TH DAY OF DECEMBER, 2023.**

**ALFRED MABEYA**

**JUDGE**

